



DEPARTMENT OF DEFENSE

BILLING CODE 5001-06

Office of the Secretary

32 CFR Part 60

[Docket ID: DOD-2008-OS-0128]

RIN 0790-AI40

Family Advocacy Command Assistance Team (FACAT)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: This part updates Department of Defense (DoD) policy and responsibilities and prescribes procedures for the implementation and use of the FACAT in accordance with 10 U.S.C. 1794. It is DoD policy to provide a safe and secure environment for DoD personnel and their families by promoting the prevention, early identification, and intervention in all allegations of child abuse and neglect.

DATES: Comments must be received by [insert 60 days from date of publication]

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions

available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mary Campise, 571-372-5346.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

To establish DoD policy, assign responsibilities, and prescribe procedures for implementation and use of the multi-disciplinary Family Advocacy Command Assistant Team to respond to allegations of child sexual abuse in DoD-sanctioned childcare and youth activities.

a. The need for the regulatory action and how the action will meet that need.

Child sexual abuse allegations in DoD-sanctioned childcare and youth activities require a coordinated community response between law enforcement, child protection agencies, and the setting from which the allegation arose. Local teams who may not be sufficiently resourced to conduct large scale investigations and coordinate an effective multi-level response can request the deployment and support of the FACAT to foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of child sexual abuse in DoD-sanctioned activities; promote timely and comprehensive reporting of all allegations; and actively seek prosecution of alleged perpetrators to the fullest extent of the law.

b. Succinct statement of legal authority for the regulatory action (explaining, in brief, the legal authority laid out later in the preamble).

Section 1794 of title 10, United States Code (U.S.C.) requires the Secretary of Defense to maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines,

including, medicine, psychology, and child development. This task force will provide assistance to the commander of the installation, and to parents at the installation, to effectively deal with the allegations.

II. Summary of the Major Provisions of the Regulatory Action in Question

- a. This regulatory action establishes a DoD multi-disciplinary Family Advocacy Command Assistant Team (FACAT) to support local installation personnel in responding to extrafamilial child sexual abuse allegations in DoD sanctioned childcare and youth activities.
- b. The deployment of the FACAT provides a coordinated and comprehensive DoD response to assist the Military Department upon DoD Component request to address allegations when local resources are limited.
- c. The goal of the FACAT is to foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of extrafamilial child sexual abuse in DoD-sanctioned activities, to ensure the timely and comprehensive reporting of all incidents to the appropriate authorities, and to seek prosecution of alleged perpetrators to the fullest extent of the law when appropriate.

III. Costs and Benefits

The benefit to the Department and to the public is to provide safe and secure environments for children of DoD personnel and their families by promoting a coordinated community response to allegations of child sexual abuse arising in DoD-sanctioned childcare and youth activities settings. The deployment of the FACAT to support local communities ensures that alleged offenders are identified, assessed, investigated, and prosecuted to the full extent of the law. Further, the multidisciplinary and well-coordinated approach promotes the identification of all potential child victims and provides a safe and secure setting for these children to be interviewed,

assessed, and supported. Per Section 1794 of Title 10, United States Code, this rule has an internal reporting requirement that will cost the Department of Defense \$600 annually. Costs for this program include salaries of government employees, training costs of approximately \$30,000 every three years, and up to \$15,000 to deploy a FACAT of five team members per response. There were no FACATs deployed in FY 2011, and there was one FACAT deployed in FY 2010. The cost of the FY 2010 deployment was approximately \$7,500.

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been certified that 32 CFR part 60 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

It has been certified that 32 CFR part 60 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that 32 CFR part 60 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 60 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

It has been certified that 32 CFR part 60 does not have federalism implications, as set forth in Executive Order 13132. This rule does not substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 60

Family Advocacy Command Assistance Team, Family health, Child abuse.

Accordingly 32 CFR part 60 is proposed to be added to read as follows:

PART 60– FAMILY ADVOCACY COMMAND ASSISTANCE TEAM (FACAT)

Sec.

60.1 Purpose.

60.2 Applicability.

60.3 Definitions.

60.4 Policy.

60.5 Responsibilities.

60.6 Procedures.

Authority: 10 U.S.C. 1794; 42 U.S.C. 13031.

§60.1 Purpose.

(a) This part establishes policy, assigns responsibilities, and prescribes procedures for implementation and use of the FACAT in accordance with section 1794 of title 10, United States Code (U.S.C.)

(b) Reserved

§60.2 Applicability.

(a) This part applies to Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities in the DoD (hereinafter referred to collectively as the “DoD Components”).

(b) The term “Military Services,” as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§60.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Child. An unmarried person under 18 years of age for whom a parent, guardian, foster parent, caregiver, employee of a residential facility, or any staff person providing out-of-home care is legally responsible.

(1) The term “child” means a biological child, adopted child, stepchild, foster child, or ward.

- (2) The term also includes a sponsor's family member (except the sponsor's spouse) of any age who is incapable of self-support because of a mental or physical incapacity, and for whom treatment in a DoD medical treatment program is authorized.

Child abuse. The physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.

Child sexual abuse. The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children

DoD-sanctioned activity. A U.S. Government activity or a nongovernmental activity authorized by appropriate DoD officials to perform child care or supervisory functions on DoD controlled property. The care and supervision of children may be either its primary mission or incidental in carrying out another mission (e.g., medical care). Examples include Child Development Centers, Department of Defense Dependents Schools, Youth Activities, School Age/Latch Key Programs, Family Day Care providers, and child care activities that may be conducted as a part of a chaplain's program or as part of another Morale, Welfare, or Recreation Program.

Family Advocacy Command Assistant Team (FACAT). A multidisciplinary team composed of specially trained and experienced individuals who are on-call to provide advice and assistance on cases of child sexual abuse that involve DoD-sanctioned activities.

Family Advocacy Program Director (FAPD). An individual designated by the Secretary of the Military Department or the head of another DoD Component to manage, monitor, and coordinate the FAP at the headquarters level.

Family Advocacy Program Manager (FAPM). An individual designated by the Secretary of the Military Department to manage, monitor, and coordinate the FAP at the headquarters level.

Military criminal investigative organization (MCIO). U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

Out-of-home care. The responsibility of care for and/or supervision of a child in a setting outside the child's home by an individual placed in a caretaker role sanctioned by a Military Service or Defense Agency or authorized by the Service or Defense Agency as a provider of care. Examples include a child development center, school, recreation program, family child care, and child care activities that may be conducted as a part of a chaplain's program or as part of another morale, welfare, or recreation program.

Sponsor. A member of a Military Service, federal civil servant, or a civilian who is eligible for authorized care through DoD medical treatment programs.

§60.4 Policy.

It is DoD policy to:

- (a) Provide a safe and secure environment for DoD personnel and their families by promoting the prevention, early identification, and intervention in all allegations of child abuse and neglect

in accordance with DoD Directive 6400.1, “Family Advocacy Program (FAP)” (see <http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf>).

(b) Promote early identification and intervention in allegations of extrafamilial child sexual abuse in accordance with DoD Directive 6400.1 as it applies to DoD-sanctioned activities.

(c) Provide a coordinated and comprehensive DoD response through the deployment of the FACAT to assist the Military Department upon DoD Component request to address allegations of extrafamilial child sexual abuse in DoD-sanctioned activities.

(d) Foster cooperation among the DoD, other Federal agencies, and responsible civilian authorities when addressing allegations of extrafamilial child sexual abuse in DoD-sanctioned activities.

(e) Promote timely and comprehensive reporting of all incidents covered by this part.

(f) As appropriate, actively seek prosecution of alleged perpetrators to the fullest extent of the law.

(g) Ensure that personally identifiable information, to include protected health information collected, used, and released by covered entities in the execution of this part is protected as required by DoD 6025.18-R, “DoD Health Information Privacy Regulation” (see <http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf>) and 5 U.S.C. 552a as implemented in the Department of Defense by [32](#) CFR part 310.

§60.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)), under the authority, direction, and control of the Assistant Secretary of Defense for Readiness and Force Management, shall:

(1) Monitor compliance with this part.

- (2) Train, maintain, and support a team of full-time or permanent part-time federal officers or employees from various disciplines to comprise the FACAT and respond to child sexual abuse in DoD-sanctioned activities.
 - (3) Develop and coordinate criteria for determining the appropriate professional disciplines, support staff, and the required capabilities of FACAT members.
 - (4) Ensure that policies and guidelines on activation and use of the FACAT are shared and coordinated with the DoD Components.
 - (5) Program, budget, and allocate funds for the FACAT.
 - (6) Appoint the chief of the FACAT and team members, and provide required logistical support when the FACAT is deployed.
 - (7) Coordinate the management and interaction of this effort with other Federal and civilian agencies as necessary.
 - (8) Foster general awareness of FACAT goals and responsibilities.
- (b) The Secretaries of the Military Departments shall:
- (1) Ensure compliance with this part throughout their respective Departments.
 - (2) Establish departmental procedures to implement with this part.
 - (3) Designate nominees for the FACAT upon request and ensure replacements are nominated when vacancies are indicated.
 - (4) Ensure that commanders and staff are aware of the availability and proper use of the FACAT and the procedures for requesting a FACAT to assist in addressing extrafamilial child sexual abuse allegations covered by this part.
 - (5) Encourage timely and comprehensive reporting in accordance with this part.

§60.6 Procedures.

(a) Reporting requirements. Any person with a reasonable belief that an incident of child abuse has occurred in a DoD-sanctioned activity must report it to:

- (1) The appropriate civilian agency in accordance with 42 U.S.C. 13031 and 28 CFR 81.1-81.5.
- (2) The installation FAP as required by DoD Directive 6400.1.

(b) Notification of Suspected Abuse.

(1) Physical or Emotional Abuse or Neglect. If a report of suspected child physical abuse, emotional abuse, or neglect in a DoD-sanctioned activity is made to the FAP, the FAPM shall:

- (i) Notify the appropriate military or civilian law enforcement agency, or multiple law enforcement agencies as appropriate.
- (ii) Contact the appropriate civilian child protective services agency, if any, to request assistance.

(2) Sexual Abuse. If a report of suspected child sexual abuse in a DoD-sanctioned activity is made to the FAP, the FAPM, in addition to the procedures noted in paragraph (b)(1) of this section, shall:

- (i) Immediately notify the servicing MCIO and civilian law enforcement as appropriate.
- (ii) Forward the report required by 10 U.S.C. 1794 through DoD Component FAP channels to the DASD(MC&FP) within 72 hours.
- (iii) Consult with the person in charge of the DoD-sanctioned activity and the appropriate law enforcement agency to estimate the number of potential victims and determine whether an installation response team may be appropriate to address the investigative, medical, psychological, and public affairs issues that may arise.

(iv) Notify the installation commander of the allegation and recommend whether an installation response team may be appropriate to assess the current situation and coordinate the installation's response to the incidents.

(v) Provide a written follow-up report through DoD Component channels regarding all allegations of child sexual abuse to the DASD(MC&FP) when:

(A) There have been significant changes in the status of the case;

(B) There are more than five potential victims;

(C) The sponsors of the victims are from different Military Services or DoD Components;

(D) There is increased community sensitivity to the allegation; or

(E) The DASD(MC&FP) has requested a follow-up report.

(c) Requesting a FACAT. An installation commander may request a FACAT through appropriate DoD Component channels from the DASD(MC&FP) when alleged child sexual abuse by a care provider in a DoD-sanctioned-activity has been reported and at least one of the following apply:

(1) Additional personnel are needed to:

(i) Fully investigate a report of child sexual abuse by a care provider or employee in a DoD-sanctioned activity;

(ii) Assess the needs of the child victims and their families; or

(iii) Provide supportive treatment to the child victims and their families.

(2) The victims are from different Military Services or DoD Components, or there are multiple care providers who are the subjects of the report from different Military Services or DoD Components.

(3) Significant issues in responding to the allegations have arisen between the Military Services or DoD Components and other Federal agencies or civilian authorities.

(4) The situation has potential for widespread public interest that could negatively impact performance of the DoD mission.

(d) Deployment of a FACAT.

(1) The DASD(MC&FP) shall deploy a FACAT at the request of a DoD Component.

(2) The DASD(MC&FP) may deploy a FACAT at the request of the Head of the DoD Component without a request from the installation commander. Such circumstances include a case where:

(i) The victims are from different Military Services or DoD Components, or there are multiple care providers who are the subjects of the report from different Military Services or DoD Components;

(ii) Significant issues in responding to the allegations have arisen between the Military Services or DoD Components and other Federal agencies or civilian authorities; or

(iii) The situation has potential for widespread public interest that could negatively impact performance of the DoD mission.

(3) The DASD(MC&FP) shall configure the FACAT based on the information and recommendations of the requestor, the installation FAPM, and the FAPD of the DoD Component.

(4) The DASD(MC&FP) shall:

(i) Request the FAPDs to identify several individuals from the FACAT roster who are available for deployment.

(ii) Request, through the appropriate channels of the DoD Component, that the individuals' supervisors release them from normal duty positions to serve on temporary duty with the deploying FACAT.

(5) The DASD(MC&FP) shall provide fund citations to the FACAT members for their travel orders and per diem and shall provide information regarding travel arrangements. The FACAT members shall be responsible for preparing travel orders and making travel arrangements.

(6) FACAT members who are subject to DoD Instruction 6025.13, "Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS)" (see <http://www.dtic.mil/whs/directives/corres/pdf/602513p.pdf>) shall be responsible for arranging temporary clinical privileges in accordance with DoD 6025.13-R, "Military Health System (MHS) Clinical Quality Assurance (CQA) Program Regulation" (see <http://www.dtic.mil/whs/directives/corres/pdf/602513r.pdf>) at the installation to which they shall be deployed.

(e) FACAT Tasks. The FACAT shall meet with the installation's commanding officer, the MCIO, or designated response team to assess the current situation and assist in coordinating the installation's response to the incidents. Depending on the composition of the team, such tasks may include:

- (1) Investigating the allegations.
- (2) Conducting medical and mental health assessment of the victims and their families.
- (3) Developing and implementing plans to provide appropriate treatment and support for the victims and their families and for the non-abusing staff of the DoD-sanctioned activity.
- (4) Coordinating with local officials to manage public affairs tasks.

(f) Reports of FACAT Activities. The FACAT leader designated by the DASD(MC&FP) or the installation commander depending on the composition of the team shall prepare three types of reports:

- (1) Daily briefs for the installation commander or designee.
- (2) Periodic updates to the FAPD of the DoD Component and to the DASD(MC&FP).
- (3) An after-action brief for the installation commander briefed at the completion of the deployment and transmitted to the DASD(MC&FP) and the FAPD of the DoD Component.

Dated: April 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.